

DECISION FOR LEO FRANK WOULDN'T MEAN FREEDOM

Lawyers Do Not Now
Contend

He Could Not Again
Be

Tried

(By Associated Press.)

WASHINGTON, Feb. 26—Attorneys for Leo M. Frank, sentenced to death for the murder of Mary Phagan, the Atlanta Factory girl, filed in the Supreme Court today Briefs in Frank's Appeal to release him in a Habeas Corpus proceeding. The Appeal will be argued next week.

They contend the trial Court lost Jurisdiction by abdicating its functions from fear or mob violence, and by arranging for Frank to remain out of Court when the verdict was announced.

For the first, the Attorneys declare Frank does not contend he cannot be held for a new trial if the present death sentence is set aside.

The brief declares Frank's Counsel at the trial could not waive his right to be present when the verdict was rendered. It is argued if he could be absent then, he could be absent during the entire trial.

"When the jurors returned into the Court Room," the Brief continues, "and found the prisoner absent, with none to look into their faces but the excited multitude, and when after the first juror had been polled, the tumult of Applause and the cheers that were bellowed were so resounding as to prevent the responses of the Jurors as they were polled from being heard ten feet away, is it possible to believe that those Jurors acted as free moral Agents, or that they were not subjected to a species of duress that swept from their minds every thought save that of personal jeopardy."

"A trial amid such concomitants is a mere travesty. It is not a legal proceeding."

Being out of Court, Frank was unable to raise the question as to the denial of his rights under the Federal Constitution, the brief contends. Once he had been denied a right, unavailing efforts to obtain a new trial could not act to make the Judgment legal, it added.

The Brief concludes:

"In the present Case, the Superior Court of Georgia has Jurisdiction over the Appellant after his indictment and down to the later stages of his trial. The verdict and all subsequent proceedings being nullities, he is entitled to his discharge from the void Judgment and to be relieved from the void sentence

contend that he cannot be held for further trial under the indictment.”

Attorneys Will Leave To Fight Frank Appeal

Solicitor General Hugh M. Dorsey leaves Saturday night for Washington, where next Tuesday he and Attorney General Warren Grice will appear before the United States Supreme Court in opposition to the Habeas Corpus Appeal of Leo M. Frank, Mr. Grice will leave for Washington Sunday morning.
